

In the Matter of License No. 234310 and all other Seaman Documents
Issued to: ROY O. WANVIG

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1313

ROY O. WANVIG

This appeal was taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 26 June 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's license upon finding him guilty of negligence. The specification found proved alleges that while serving as Master and Pilot on board the United States Steam Ferry CHATHAM under authority of the license above described, on or about 29 August 1960, Appellant did:

"* * * while navigating in the Hudson River, New York Harbor, wrongfully fail to keep out of the way of a privileged vessel in a crossing situation, the Steamship SEATRAN GEORGIA, thereby contributing to a collision between your vessel and the SEATRAN GEORGIA, with resulting injuries to passengers on board your vessel."

Appellant was represented by counsel at the hearing. He entered a plea of not guilty to the charge and specification.

The Investigating Officer, by stipulation, introduced into evidence a transcript of the United States Coast Guard Investigation into the matter.

In defense, Appellant offered in evidence the testimony of a witness who observed the collision from his tow boat and also testified on his own behalf.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending Appellant's license for a period of two months.

FINDINGS OF FACT

On the morning of 29 August 1960, the ferry CHATHAM, with the Appellant aboard as Master and Pilot acting under authority of his

license, was under way on the Hudson River making about 6 knots on a south-southeasterly course, having departed its slip in Hoboken, New Jersey at 0809 bound for Pier 16, Barclay Street, Manhattan. Appellant was in charge of the ship's navigation. The river in the vicinity is about one-half mile wide.

At 0814 E.S.T. the upbound SEATRIN GEORGIA, proceeding on course 008 degrees true at a speed of about 6 knots against the current, was to the south of the ferry and positioned some 200 yards from, and navigating parallel to, the pier ends on the New York side. To the left of the SEATRIN, about 300 yards away, was another vessel, the EXPLORER, running in the same direction as the SEATRIN. The latter was on the starboard quarter of the EXPLORER and overtaking her. The tide was ebbing at about two knots. There was fog which limited the visibility to approximately one-half mile from 0814 until the casualty.

At this time, the SEATRIN was off Pier 13 when she observed the CHATHAM about a point on the port bow and approximately one-half mile away. The SEATRIN was almost two points on the starboard bow of the CHATHAM. The latter was then parallel with Pier 25 and on the easterly side of the river after having crossed ahead of the EXPLORER. At this time, the SEATRIN sounded a one-blast signal, changed course two degrees to the right and reduced speed to slow ahead.

Appellant heard the SEATRIN's one-blast signal and continued on the same course at the same speed. He blew a danger signal followed by two blasts to indicate that he intended to cross the SEATRIN's bow. About 0815, Appellant sounded another danger signal, ordered the engines on FULL AHEAD of about 9 knots and his wheel left. Meanwhile, the SEATRIN, seeing the CHATHAM continuing to cross her bow, sounded a danger signal and three-blasts, reversed her engines to full astern and let go to the port anchor. At 0816, emergency full astern was ordered. The reversing of the SEATRIN's engines headed the ship toward the Manhattan shore. Approximately 3 minutes after the SEATRIN's one-blast signal, her bow struck the CHATHAM on the starboard quarter at a point about 200 feet off Pier 20. Some of the 300 passengers on the CHATHAM were injured.

Appellant's prior record consists of an admonition in 1958 for failing to keep a proper lookout while serving as Master.

BASES OF APPEAL

The CHATHAM witnesses testified that the SEATRIN came into view out of a patchy fog at a distance of 700 to 800 feet. It was then too late to do anything except to attempt to cross the SEATRIN'S bow. Therefore, this was a situation of special

circumstances and not a crossing situation where the starboard hand rule applied.

Appellant's conduct should be judged on the basis of the facts as they appeared to him at the time. There would have been no collision if the SEATRIN had maintained her original course.

In conclusion, it is submitted that the charge against Appellant should be dismissed.

Appearance: Harold J. Gilmartin, Esquire, of New York
City, of Counsel

OPINION

A thorough review of the record convinces me that the distance at which the SEATRIN was seen by Appellant was approximately one-half mile rather than 700 to 800 feet. This conclusion is based on evidence in addition to the estimates of one-half mile given by the Master, Pilot, and lookout on the SEATRIN as corroborated by the Master of the EXPLORER.

Appellant stated both at the hearing and the investigation that the CHATHAM was off Pier 25 when he first saw the SEATRIN and heard her one-blast signal. The Third Mate of the SEATRIN testified that she was abeam of Pier 13 at this time. The Master of the EXPLORER testified that his ship was off Pier 14 at 0814 E.S.T. and the SEATRIN was on the starboard quarter. This agrees with the testimony of the Third Mate as to the location of the SEATRIN when the CHATHAM was sighted and the one-blast sounded. Coast and Geodetic Survey Chart Number 754 shows that the distance between Pier 13 and 25 is just about one-half mile. The Master of the EXPLORER also stated that the fog was such that the distance of visibility did not vary rapidly. Since there was sufficient distance to permit maneuvering after the ships sighted each other, Appellant's contention, that the rules applicable to crossing situations did not apply, is rejected.

A consideration of all the evidence leads me to believe that the CHATHAM was on a true course of about 162 degrees (Appellant: Exhibit 13); the SEATRIN was proceeding about 600 feet off the piers and 900 feet from the EXPLORER; the SEATRIN was sighted bearing almost 2 points on the starboard bow of the CHATHAM; and the CHATHAM was seen bearing about one point on the port bow of the SEATRIN at 0814. This fits with, among other factors, the testimony of the Master of the EXPLORER that the CHATHAM had crossed his ship's bow when he first saw the ferryboat and the conceded fact that she had not crossed the bow of the SEATRIN when signals were exchanged. It seems the estimate given by the lookout

on the SEATRIN, that the CHATHAM was about a point on the port bow, was the most accurate as to the bearing of the ferryboat at a distance of a half mile. (Others testified that the bearing was greater.) This is not surprising in view of the facts that the lookout was not responsible for the navigation of the SEATRIN and he formerly had a license to serve as a Master. The projected courses of the two ships indicate that the CHATHAM, at 6 knots, would not have cleared the intersection of the two course lines until approximately 0816.

Under these circumstances, there is no doubt in my mind that Appellant was negligent for continuing on the same course, for approximately a minute after seeing the SEATRIN, with the intention of crossing the bow of the privileged vessel in a crossing situation. The burdened vessel is not excused from the duty to wait even though it is proved that she would have crossed safely ahead if the privileged vessel had maintained her course and speed. Socony Vacuum Transp. Co. v. Gypsum Packet Co. (C.C.A. 2, 1946), 153 F.2d 773; Clyde-Mallory Lines v. New York Cent. R. Co. (C.C.A. 2, 1936); 83 F.2d 158. There was more room to pass between the SEATRIN and the EXPLORER (900 feet) than between the SEATRIN and the piers (600 feet).

In this case very similar with respect to the relative positions of the two vessels as they approached each other and collided (including a slight alteration of course by the privileged vessel), the burdened vessel was found guilty of committing a "gross navigational fault" for continuing her course and speed in an attempt to cross the bow of the privileged vessel rather than maneuvering to keep out of the way. Reading Co. v. the BLOMMERSDYK et al. (U.S.D.C., E.D. Pa., 1953), 111 F. Supp. 474. Appellant was not less guilty in this case.

ORDER

The order of the Examiner dated at New York, New York, on 26 June 1961, is AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 14th day of May 1962.